

1 JOSEPH P. RUSSONIELLO (CABN 44332)
2 United States Attorney

3 BRIAN J. STRETCH (CABN 163973)
4 Chief, Criminal Division

5 W.S. WILSON LEUNG (CABN 190939)
6 Assistant United States Attorney

7 450 Golden Gate Avenue, Box 36055
8 San Francisco, California 94102-3495
9 Telephone: (415) 436-6758
10 FAX: (415) 436-6753

11 Attorneys for the United States of America

12
13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA
16
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA) No. 3:09-70315-BZ

19 v.)

20 JULIO HERNANDEZ,)

21 Defendant.)

22)
23 STIPULATION AND [PROPOSED])
24 ORDER DOCUMENTING WAIVER)
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26)
27)
28)

29 With the agreement of the parties, and with the consent of the defendant, the Court enters
30 this order vacating the preliminary hearing date of April 17, 2009, setting a new preliminary
31 hearing date on May 8, 2009, at 9:30 a.m., before the duty magistrate judge, extending the time
32 for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding time
33 under the Speedy Trial Act from the date of this stipulation to May 8, 2009. The parties agree
34 and stipulate, and the Court finds and holds, as follows:

35 1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009
36 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

1 commit assault with a dangerous weapon in aid of racketeering, and one count of using or
2 possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§
3 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10,
4 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009,
5 Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq.,
6 was appointed to represent him. The defendant waived his right to seek bail without prejudice to
7 any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for
8 April 17, 2009. The defendant remains detained pending further proceedings.

9 2. Following the appointment of Mr. Eisenberg, the parties have been conferring
10 regarding possible dispositions of this matter. These discussions are continuing with the goal of
11 reaching a disposition prior to the filing of formal charges against the defendant. As a result, the
12 parties have asked the Court to extend the preliminary hearing date to May 8, 2009, pursuant to
13 Federal Rule of Criminal Procedure 5.1, and excluding the time under the Speedy Trial Act, 18
14 U.S.C. § 3161.

15 3. Taking into the account the public interest in the prompt disposition of criminal
16 cases, the above-stated ground is good cause for extending the time limit for a preliminary
17 hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and
18 for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the
19 defense time for effective preparation and for seeking disposition of this matter on agreed-upon
20 terms.

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1 4. Accordingly, with the consent of the defendant, the Court hereby: (a) vacates the
2 April 17, 2009 preliminary hearing date and extends the time for a preliminary hearing until May
3 8, 2009, before the duty magistrate judge, at 9:30 a.m.; and (b) orders that the period from the
4 date of this order to May 8, 2009 be excluded from the time period for preliminary hearings
5 under Federal Rule of Criminal Procedure 5.1 and from Speedy Trial Act calculations under 18
6 U.S.C. § 3161(h)(7)(A) & (B)(iv).

7
8 STIPULATED:

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10 DATED: April 15, 2009

/s/
11 GILBERT EISENBERG, ESQ.
12 Attorney for JULIO HERNANDEZ

13 DATED: April 15, 2009

/s/
14 W.S. WILSON LEUNG
15 Assistant United States Attorney

16 IT IS SO ORDERED.

17 DATED: April 16, 2009


18 HON. BERNARD ZIMMERMAN
19 United States Magistrate Judge
20 MARIA ELENA JAMES